UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs- Hon. Nancy G. Edmunds

D-2 BOBBY W. FERGUSON, No. 10-CR-20403-02

Defendant. Sentencing Date: October 10, 2013
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# GOVERNMENT'S SENTENCING MEMORANDUM AS TO DEFENDANT BOBBY W. FERGUSON

The United States of America submits the following memorandum in connection with the sentencing of defendant Bobby W. Ferguson on October 10, 2013.

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## I. Statutory Factors

As the court is aware, Title 18, United States Code, Section 3553(a) requires the court to impose a sentence that is sufficient but not greater than necessary to comply with the purposes set forth in that section, based on the factors discussed below.

### A. The Nature and Circumstances of the Offense

Bobby Ferguson was the catalyst at the center of an historic and unprecedented extortion scheme along with former Detroit mayor Kwame Kilpatrick. It started when Kilpatrick was in the state house, stealing several hundred thousand dollars in state grant money to renovate Ferguson's offices and pay Carlita Kilpatrick no-show teaching fees. When Kilpatrick became mayor the scheme escalated to extorting tens of millions of dollars by forcing local businesses to partner with Ferguson on city contracts. While Ferguson relied on Kilpatrick to back up his threats, Ferguson drove the extortion machine. With ruthless abandon, he bullied local businessmen and women, threatening to cancel their contracts and promising to visit financial harm upon them if they did not accede to his demands.

The enterprise hit its crescendo when Ferguson was able to force local contractors to give him payments for no work in order to keep their city contracts. In total during the Kilpatrick administration, Ferguson received $127 million in revenues from city contracts, at least $73 million of which were illegal proceeds from extortion.

### 1. Threats, Lies and Extortion

#### a. Ferguson Extorted Lakeshore

Ferguson's extortions began in 2002 when he approached a relatively small minority firm, Lakeshore Engineering. Lakeshore had won a $10 million sewer contract, which had been approved by the Water Board and the Detroit city council. Ferguson, knowing the mayor still had to sign off, approached Tom Hardiman of Lakeshore and told him he wanted 25% of the contract. Hardiman told Ferguson that Lakeshore could not use his services because it already had its team in place. Ferguson told Hardiman, "It's still gotta go by the mayor's desk." Fearing Ferguson's threat, Hardiman came back with an offer of 10%, which Ferguson refused. Instead, Ferguson got Lakeshore's $10 million contract cancelled. Ferguson fired another shot at Lakeshore soon thereafter, causing a different $5 million sewer repair contract Lakeshore had won to be cancelled as well.

Lakeshore quickly learned its lesson, so the next time it bid for a contract it did so with Ferguson on its team. That move worked, and Lakeshore won a $20 million sewer outfalls contract, DWS-849. But Ferguson would make them pay. He made multiple demands for no-show payments that grew to $1.7 million. Lakeshore paid out of fear that Ferguson would use his defacto mayoral power to cancel the contract, as he had Lakeshore's previous contracts.

Ferguson's bullying of Lakeshore had just begun. On one occasion, just before Kilpatrick's reelection in the fall of 2005, he demanded $25,000 on the spot, which Hardiman and Avinash Rachmale fearfully and immediately paid in cash. Ferguson concealed the extortion payments he received by creating false invoices for "Johnson Consulting Services," for work and materials that were never provided to Lakeshore.

Later, Ferguson bilked Lakeshore for $75,000 related to an asbestos contract that Ferguson had absolutely no part in. He also demanded that Lakeshore pay him $820,000 for no-show "management fees" to his company, Xcel Construction, for Lakeshore's water main contract CM-2014. Lakeshore paid the money after Ferguson told Tom Hardiman, "*I'll get your contracts stopped*" and told Avinash Rachmale, "*I will shut down your job*." Lakeshore acquiesced to Ferguson's outrageous demands because they knew, based on past encounters with him, that he was ready, willing and able to act on his threats.

**b. Ferguson Extorted Inland**

As with Lakeshore, Ferguson immediately took advantage of his partnership with Kilpatrick to needlessly insert himself into a $50 million sewer lining contract, CM-1368, that had been already properly awarded to Inland Waters Pollution Control. Ferguson had Kilpatrick hold up the contract until Inland replaced its minority contractor, Charlie Williams, with Ferguson. After Ferguson had gotten his foot in the door, he became a constant source of aggravation and menace for Inland. As Kathleen McCann testified, “We were breathing an air that was thick with threats.” And Ferguson’s threats were not idle ones. When Inland needed the mayor’s approval for a perfectly legitimate $12 million amendment to contract 1368, Ferguson had Kilpatrick hold it up for several months until Inland relented to Ferguson’s demand for $350,000 in no-show work. McCann explained, “Inland...still, essentially, had a sword hanging over their head.” Ferguson received $20.8 million in gross revenues on the contract.

**c. Ferguson Extorted Walbridge**

When the Walbridge Aldinger construction firm finished a bid tally neck-and-neck with its closest competitor for the $75 million Baby Creek/Patton Park contract (PC-748), Ferguson again moved in. There was still the issue of the application of the equalization credits by the DWSD that could tip the balance for or against Walbridge. Bernard Parker III of Walbridge met with Kilpatrick’s chief administrative officer, Derrick Miller, who told Parker that Walbridge had to put Ferguson on the team if they wanted to be sure the contract was awarded to them. Even though Walbridge had legitimately won the contract on the merits without Ferguson's participation, Walbridge did not want to risk the consequences of crossing the administration so they agreed to needlessly insert Ferguson into the deal—to the detriment of their own pocketbook and the excavation firm they previously had partnered with—resulting in over $13 million in revenues for Ferguson's companies.

As he had shown in his dealings with Lakeshore and Inland, once Ferguson had found a compliant company, he would not leave them alone. Ferguson later attempted to extort Walbridge in connection with a different contract – the $140 million dollar Oakwood pump station contract, demanding that they enter a supposed "joint venture" with Ferguson that would give him 35% of the revenues without Ferguson assuming any downside risk if there were later losses. He arranged for the mayor's chief of staff, Christine Beatty, to delay the bidding to buy time for Ferguson to strong arm Walbridge to enter the improvident deal. DWSD Director Victor Mercado took the highly inappropriate step of making a personal appeal to a Walbridge official to joint venture with Ferguson, suggesting that the contract would go to Walbridge if they did, notwithstanding that it was supposed to be a competitively bid public project. Ferguson even went so far as to cause former mayor Kilpatrick to meet with the president of Walbridge, John Rakolta, on Ferguson's behalf, at the Manoogian mansion one weekend, in an attempt to convince Walbridge to partner with Ferguson. After Walbridge refused Ferguson's unreasonable demands, they lost the bid for the contract.

### 2. Cost to the Community

Ferguson's actions carried a heavy cost not only for city contractors, but for the citizens of the region who paid for the city services that he manipulated to his advantage. For example, Ferguson and the former mayor illegally steered water main contract CM-2014 to Ferguson's team, even though its bid was $1,637,000 higher than the DLZ team that rightfully won the bid. They did the same with the downtown water main project let under CM-2012, even though Ferguson's bid was 47% higher than the team that deserved the award. And the Detroit Building Authority, headed by Christine Beatty, awarded the Heilmann Recreation Center job to Ferguson's team, even though they were $86,000 higher and ranked second to bottom in terms of the qualified bidders. On Lakeshore's sewer outfalls contract, DWS-849, Ferguson extorted $1.7 million for *no work*, some of the cost of which may have been passed onto the city and the water ratepayers of Southeast Michigan.

And these are just the costs associated with the charged contracts that were easily identified during trial. Notably, there has never been an audit of Ferguson's billing practices to determine the true cost of having him thrust into virtually every large water contract during Kilpatrick's six-year administration. As just one example of the potential for fraud, according to Inland employees Walter Rozycki and Dennis Oszust, Ferguson routinely would submit invoices that inflated the quantities of his work without supporting documentation, some of which were patently fraudulent, most of which did not conform to DWSD's standardized and audited "Blue Book" rates. Ferguson would also re-invoice work that previously had been paid. When Inland disallowed the bills, Ferguson would respond that he had his own rates or he would go straight to DWSD officials to get the invoices approved. DWSD officials such as Victor Mercado and Ramesh Shukla would pressure Inland to approve Ferguson's invoices. (*See interview report of Walter Rozycki and Dennis Oszust, Exhibit K*).

DWSD Maintenance Supervisor Clarence Dishman confirmed that Ferguson submitted fraudulent invoices for his work on DWSD contracts. When Dishman refused to pay them, Ferguson would go to Mercado, who would approve them. (*See interview report of Clarence Dishman*, *Exhibit L*).

In addition to costing the city and the ratepayers millions of dollars, Ferguson's "No Deal Without Me" scheme of extorting city contracts for himself meant that many legitimate companies had no shot at winning city work, even though they might have been the lowest, most qualified bidders. Thus, the city didn't get the best services for the lowest price. And, while his defense counsel attempted to portray Ferguson as an advocate for other minority owned businesses—particularly, African American ones—Ferguson's near monopoly on city work financially handicapped black-owned companies such as Farrow and JOA Construction, and put others, like Hayes Excavation and Jomar, out of business entirely. Ferguson's text messages with Kilpatrick revealed that far from promoting other African-American businesses, he actively undermined them, then laughed at their attempts at getting redress from the city administration.

**3. Theft of Grant Money**

Extortion was not Ferguson's only crime. He stole $250,000 in state grant money that was meant to help the poor in Southeast Michigan. Instead of providing the disadvantaged in Detroit with opportunities to participate in and appreciate arts and cultural activities, Ferguson used the grant money Kilpatrick steered to his nonprofit to install spiral staircases, marble entries, hardwood floors and stylish furniture in his presidential offices at Ferguson Enterprises. He also used these public funds to purchase a residence for $24,000, an investment property he turned around and sold in 2005 for $42,000, almost doubling the public money and keeping it all for himself. Martin Jolly, who shared the duplex on Myers Street that Ferguson purchased with the stolen grant money, testified that

Ferguson did not maintain the property so he (Jolly) had to cut the grass in order to prevent the duplex from becoming an eyesore.

Ferguson covered up his theft with repeated lies to the state budget office, claiming that he was spending the money on a home for runaways and seniors. He even doctored invoices to conceal the fact that the money was being spent on his business offices. For example, the government demonstrated during trial that Ferguson sent the state invoices from Detroit Interiors (the company doing the renovations at Ferguson's offices) that stated work was being done on a "training area" for Ferguson's nonprofit. But the *actual* invoices from Detroit Interiors showed the work was to provide marble moldings and railings in the president's office at Ferguson Enterprises. Ferguson made similar alterations with invoices from AirTec Corporation, a company that was installing industrial doors at Ferguson Enterprises. He submitted a completely different invoice to the state which showed the work being done for the non-profit. At trial, Christopher Boetcher, a representative from AirTec, testified that the AirTec invoice Ferguson submitted to the state was not even one of AirTec's invoices. Rather, Ferguson created the fake invoice out of whole cloth to conceal his theft of the grant money.

**4. Obstruction of Justice**

Ferguson obstructed justice during the course of the racketeering conspiracy. The court heard from witnesses Darlene Jefferson, Renee Newsome and Josephine Johnson. These women testified that they were three of the "straw donors" Ferguson used to contribute over $40,000 to the Kilpatrick for Mayor campaign using his own corporate proceeds. In the summer of 2005, after Ferguson learned of a federal grand jury investigation into these straw donations, Ferguson pressured the women to lie in the grand jury and to the FBI about the fact that Ferguson provided them money orders that they passed off as their own personal campaign contributions. One of the donors, Darlene Jefferson, testified that Ferguson showed up unannounced in her bedroom one morning and instructed her to lie to the grand jury. Ferguson told Jefferson that if she told the truth about the fact that Ferguson provided the money orders, her sister would pay a price.

Ferguson further obstructed justice before this court during trial. He did so by introducing before the jury a demonstrably false exhibit, D-IN1-60.
On August 22, 2004, there was a sewer collapse in Madison Heights causing a large sinkhole for which the DWSD was responsible. The government introduced text messages between Ferguson and Kilpatrick from September 1 and 2, 2004, showing the two of them scheming to get Ferguson work on the emergency sinkhole job. Ferguson texted Kilpatrick that they needed to meet about a "great

idea" Ferguson had about how he could "move it" on the sinkhole repair. (*See* Gov. Ex. IN1-34).

In an apparent attempt to undermine the impact of these text messages, as well as attack the credibility of the government's investigation, Ferguson altered a Ferguson Enterprises Daily Field Record to purportedly show that he was already working at the sinkhole site on August 23, 2004, about a week before the dates of those incriminating text messages. Ferguson introduced this forged exhibit into evidence and presented it to the jury. (*See* D-IN1-60). However, the government located the *actual* Daily Field Record that Ferguson altered and turned into D-INI-60. The real Daily Field Report, unlike the altered version introduced by Ferguson, had an identifying Field Record number on it and it showed that the date Ferguson was doing the work at the sinkhole site was not August 23 but *September 23, 2004*, about three weeks *after* the incriminating text messages between Ferguson and Kilpatrick. (*See* Gov. Ex. IN1-72-B). In addition to producing the true Daily Field Record, the government introduced testimony and additional documents that proved that the first day Ferguson was on the sinkhole site was September 14, 2004, when he was verifying the scope of work and moving some equipment there. (*See* Gov. Ex. IN1-71A). Moreover, during final argument, the government showed the jury an overlay of the exhibits that conclusively demonstrated how the phony defense exhibit, D-IN1-60, was an altered photocopy of the true Daily Field Record, Gov. Ex. IN1-72-B.[1]

Even *after* the trial, Ferguson continued his efforts to obstruct justice. First, during a hearing before the court to determine whether he should be remanded to custody pending his sentencing, Ferguson allowed his attorney in his presence to argue that he was not a flight risk because his financial resources had been seized by the government and he had not even been able to pay his legal bills. (*Tr. Detention Hearing, March 11, 2013, p. 15).* Just four days after these representations to the court, on March 15, 2013, the government served seizure warrants at four financial institutions in Alabama that contained hundreds of thousands of dollars belonging to Ferguson that he had deposited, or caused to be deposited.

Moreover, from prison Ferguson has been directing others to take actions to prevent the government from making further seizures. Since Ferguson's remand, law enforcement agents listened to dozens of prison calls from Ferguson to a relative and to his girlfriend. In those calls, Ferguson used code names to refer to his girlfriend and others as he directed his girlfriend to handle surreptitiously his financial affairs for him while he was in prison, including making payments for

[1] Ferguson continued to have his counsel refer to the falsified Daily Field Record even after the government introduced the unaltered log and demonstrated the falsity of D-IN1-60 with documents and testimony.

him on items like vehicles and gift cards for his family members, wiring money to his prison account, and transferring possession of his vehicles to his relatives.

The agents' post-trial investigation revealed that Ferguson also directed his girlfriend to make a single-day round-trip to Alabama in April 2013 so she could coordinate with Ferguson's relative who was about to access a safety deposit box. Ferguson instructed his relative to deal with Ferguson's girlfriend and that they would handle the money the "way we did last time." According to bank records, Ferguson's relative accessed a bank safety deposit box in Sylacauga, Alabama on April 9, 2013. The box had not been accessed for over two years, the last time being on January 3, 2011, a time when Ferguson's credit card records indicate he was charging gas and other items in Sylacauga, Alabama. Then, in an April 19, 2013, prison call, the girlfriend told Ferguson she was going to go and "get the stuff" from Ferguson's relative. Telephone conversations, airline records and emails between Ferguson and his girlfriend indicate that his girlfriend traveled to Sylacauga Alabama on April 21, 2013, shortly after Ferguson's relative accessed the safety deposit box at the Sylacauga bank. Then, on May 4, 2013, soon after her return to Detroit, Ferguson's girlfriend accessed a safety deposit box in Detroit. Finally, during the time period that Ferguson was directing his girlfriend to obtain monies, he was able to get appointed counsel in another criminal case involving the Garden View Estates project.

Ferguson also committed acts of obstruction in connection with the federal investigation in the Garden View Estates case. Specifically, on January 15, 2009, the day search warrants were executed in that case, Ferguson met with an employee, Shakib Deria, and told him to lie to the F.B.I. and tell the agents that a handgun discovered in a safe in Ferguson's Xcel office belonged to relative of Ferguson, when in truth it was Ferguson's.[2]

### 5. Ferguson's Misuse of Kilpatrick's Official Office

Ferguson, with the backing of Kwame Kilpatrick, used the power and authority given to the mayor and his office to threaten and intimidate others and further the Kilpatrick Enterprise.

Officer Michael Fountain testified that in early 2002—at a time when Ferguson served as co-chairman of the mayor's committee to clean up blight in the city—Ferguson appeared in court to respond to numerous environmental violation notices he had received for illegally dumping his commercial waste onto city of Detroit land. Instead of admitting guilt or cleaning up the mess he caused, Ferguson brought two of Kilpatrick's police body guards with him. With the bodyguards at his side, Ferguson threatened the officer's family, warning him,

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[2] In the Garden View case itself, Ferguson obtained over $11 million in work at the federal housing site through fraud and bid rigging, which included getting owners of other companies to submit fraudulent "bids" on contracts that were steered to Ferguson.

"Well, your family wouldn't like the fact that all of this is going on 'cause something could happen." Officer Fountain asked Ferguson what he meant. Ferguson explained, "It would be in the best interest for you to cancel these tickets." Fearing for his family's safety, Office Fountain told the city prosecutor he could not proceed on the tickets and they were dismissed.[3] (*Tr. Transcript, Vol. 12, 9-25-12, pp. 150-51).*

On another occasion, in February 2006, a television investigative journalist was pulled over by officers from mayor Kilpatrick's executive protection unit (EPU). At the time the journalist was following Ferguson as part of a story describing favorable treatment Ferguson was receiving in Wayne County jail following a conviction for pistol whipping one of his employees. Toll records around the time of the police stops show calls between Ferguson, mayor Kilpatrick, and mayor Kilpatrick's EPU, suggesting their coordination in the stop of the reporter.

On yet another occasion, when Ferguson was attempting to collect $20,000 from the developer of the Club Rain adult night club, Ferguson asked Kilpatrick if

[3] Ferguson made a habit of illegally dumping his industrial waste. In 2008, Ferguson dumped over 200 truckloads of contaminated soil, that is, soil and debris with unsafe levels of lead, arsenic and other harmful compounds onto federally owned land where Ferguson was installing water and sewer infrastructure for the Garden View Estates housing project. Many of the contaminated truckloads came from Ferguson's DWSD job sites. FEI was later terminated from the project. The federal government was required to spend over $1.4 million to clean up the contamination caused by Ferguson.

he could use the Building & Safety Engineering Department, a city department controlled by the mayor, to take punitive actions against the owner of Club Rain in retaliation for the lack of payment. Ferguson sent a text to Kilpatrick, "CLUB RAIN...FEI [Ferguson Enterprises, Inc.] DID 20,000 JOB AND HE [the owner of Club Rain] Won't PAY. IS IT ALRIGHT IF BLDS SAFETY FUCKS WITH HIS PERMIT." The mayor did not object in his reply text, simply stating, "Will call later."

Yet another example of Ferguson's misuse of Kilpatrick's official power involves Ferguson's demolition work at the Book Cadillac Hotel. Odell Jones testified that Ferguson was ticketed by the Michigan Department of Environmental Quality (MDEQ) in 2004 for improperly handling asbestos at the site. Jones said Ferguson's employees did not have basic safety equipment, such as respirators and proper clothing to handle the asbestos. Jones raised these concerns with Ferguson. Jones testified that Ferguson did not seem to care that his own employees were working without the necessary safety equipment, focusing instead on the fact that he would have mayor Kilpatrick call the Governor to take care of the MDEQ tickets. (*Tr. Transcript, Vol. 64, 1-16-13, pp. 86-87).*

## B. History and Characteristics of the Defendant

Ferguson has a substantial record of contact with law enforcement and criminal convictions. And after each transgression, Ferguson was afforded leniency by the criminal justice system.

### 1. History of Violence

Beginning at the age 20, Ferguson has a well-documented history of violent crimes and intimidation.

#### a. Baseball Bat Attack

On August 5, 1988, a year before he turned 21, Ferguson and an underage friend attempted to enter a sports bar in Farmington Hills with fake identifications. According to the Farmington Hills Police Department reports, the doorman refused to accept the fake identifications tendered by Ferguson and his friend. Ferguson went to his car, retrieved a wooden baseball bat and hit the doorman on the head with the bat, causing him to fall to the ground. When a second employee of the sports bar tried to protect the doorman from further attack by Ferguson, Ferguson struck that employee in the knees twice with the bat, knocking him to ground. Ferguson and his friend went to their car, removed its license plate and drove away, leaving behind the bloodied doorman and kneecapped employee. Ferguson was later arrested and police recovered the baseball bat and Ferguson's fake identification. At the time of his arrest, Ferguson had an outstanding warrant for driving on a suspended license.

Ferguson was charged with felony assault with bodily harm, but was allowed to plead guilty pursuant to the Holmes Youthful Trainee Act (HYTA), and received a sentence of two years probation.

### b. High Powered Rifle Attack

Just seven months later, Ferguson fired a Tech-9 semi-automatic rifle into a crowd of people. According to Detroit Police Department reports, on the evening of March 24, 1989, Ferguson and a friend got into an altercation with two young men. Ferguson and his friend obtained Tech- 9 rifles from a home on MacKenzie Street and opened fire into a crowd of people. A 19-year-old was shot in the chest and a 17-year-old was shot in his backside. Ferguson was later arrested and charged with attempted murder, but the victims and witnesses failed to appear for the preliminary exam, so the case was dismissed.

### c. Pistol Whipping of FEI Employee

Ferguson's use of violence and intimidation continued during the time of the racketeering conspiracy charged in this case. According to court records and sworn testimony, on October 6, 2004, Ferguson called one of his subordinate employees, Kennedy Thomas, into in his office at Ferguson Enterprises. There, Ferguson pulled a gun from his waistband and put it on his desk with the barrel pointed towards Thomas. Ferguson demanded to know why Thomas had called Ferguson's wife late in the evening. While Thomas was explaining that he did not contact Ferguson's wife, Ferguson struck Thomas on the head with the handgun nine times, knocking Thomas to the floor. Ferguson picked Thomas up and slammed him into a wall. Then he held the gun up to Thomas's cheek and said that he should kill him. Thomas thought he was about to be killed. Fortunately, he was able to escape from Ferguson's office building. Thomas drove himself to a hospital and suffered a seizure there while he was getting his blood pressure taken. He sustained permanent brain damage from the attack and had to use a walker to move around for several months afterwards.

Ferguson was charged with assault to do great bodily harm less than murder, assault with a dangerous weapon, and a felony firearm offense. On November 19, 2004, a preliminary examination was scheduled before 36th District Court Judge Deborah Lewis Langston. Just before the hearing, Ferguson approached Thomas and threatened him, saying, "You'd better rethink this." Judge Langston was informed about this and ordered Ferguson to appear before another judge to explain why he should not be held in contempt of court for threatening Thomas. Thomas also told Judge Langston that the evening before Ferguson's threats, at around 11 p.m., someone fired bullets through the window of his house, while Thomas's wife and children were home.

On August 22, 2005, Ferguson pleaded guilty to assault with intent to do great bodily harm less than murder. Despite his brutal attack on Thomas and the permanent brain damage he caused, Ferguson received only ten months in jail and five years probation. Ferguson also got the benefit of serving his sentence in a work-release program, where he only had to sleep at the jail, but could leave custody each day for 12 hours to return to his office to run Ferguson Enterprises. Later his free time was increased to 20 hours per day. As the evidence during the racketeering trial amply demonstrated, Ferguson was committing new crimes while away from jail in this time period, including extortion and bribery. Moreover, according to the Wayne County Sheriff's Office, Ferguson returned to jail from "work release" several times intoxicated.

In 2007, Thomas brought a civil suit against Ferguson. During the trial, Ferguson falsely claimed that he did not pistol whip Thomas, but instead acted in self-defense by using an ashtray to ward off Thomas, who was the supposed aggressor. The jury rejected Ferguson's story, awarding Thomas $2.6 million in damages. The amount was later reduced on appeal by Ferguson to $1.6 million.

### 2. History of Flouting the Law

Ferguson's past conduct suggests that he believes that the law does not apply to him. For example, after being convicted of pistol whipping Kennedy Thomas in 2005, Ferguson was well aware that he could no longer own or possess a firearm. Despite this, when Ferguson's office at Ferguson Enterprises was searched in 2009, agents found a .380 Bryco semi-automatic pistol in a safe in his presidential office, along with .380 caliber bullets. Ferguson kept a second handgun in his desk drawer, a Taurus 9mm pistol, which agents seized, along with matching ammunition. In 2010, another search warrant was executed, this time at Ferguson's apartment in the Riverview condominium complex. Ferguson *again* was found to be in possession of a firearm: this time a loaded Mossberg shotgun in his master bedroom closet.

Ferguson's disregard for the law is not limited to firearms. In addition to his arrests for driving on a suspended license, disorderly conduct and reckless driving, Ferguson was arrested on May 26, 2008 while driving drunk, after Southfield police officers saw him weaving in and out of traffic, nearly striking other vehicles and the center dividing wall, and reaching speeds of up to 100 m.p.h. Breathalyzer tests showed he was over the legal limit and he was convicted of operating a vehicle under the influence of alcohol. As was the case so many times before, Ferguson received a slap on the wrist: 5 days in jail and 15 months probation.

Ferguson has committed other blatantly illegal acts. For example, in 1999, he obtained false identification from the Michigan secretary of state, a Michigan driver's license in the name of "Antonio Cortez-Julian Talley." Ferguson used a street address for the license that is associated with one of his many companies, "Four Childrens Enterprises, L.L.C." Moreover, a criminal history check of the alias license revealed a traffic ticket issued in 2000 in Alabama, where Ferguson's mother resides and where Ferguson is known to have had bank accounts. While it is unclear why Ferguson felt the need to obtain a Michigan driver's license in a false name and operate under an alias, it most likely was not for legitimate purposes. And Ferguson has never addressed or explained why he held this false driver's license.

### C. Seriousness of the Offense, Promoting Respect for the Law, Providing Just Punishment

Bobby Ferguson's corruption offenses are serious ones. He was the driving force behind numerous extortions of local business owners that corrupted the DWSD and city of Detroit contracting processes and cost the city and water ratepayers millions of dollars. His sentence should reflect the seriousness of his crimes and adequately punish him.

**D. Providing Adequate Deterrence**

Ferguson's stranglehold over municipal contracting in Detroit for six years was seen and felt by the entire local government contracting community in the Detroit metropolitan area. Some, like the employees of Lakeshore, Inland Waters, and Walbridge, saw it up close, as they themselves were extorted. But, the entire contracting community and most members of the city administration knew that satisfying Ferguson was the linchpin for getting or keeping contracts. A less-than-severe sentence for Ferguson's brazen criminal conduct would send the wrong message to the community. Ferguson needs to be substantially punished so that others are deterred from engaging in similar conduct.

**E. Protection of the Public from Further Crimes of the Defendant**

Ferguson himself needs to be deterred from future misconduct. He has committed numerous crimes over the majority of his life, which have not been adequately addressed by the criminal justice system. Ferguson received only probation and work release after serious crimes like causing permanent brain damage to Kennedy Thomas with a pistol, carrying out brutal baseball bat attacks, and shooting people with a Tech-9 assault rifle. The failure of the criminal justice system up until now to appropriately punish Ferguson likely emboldened him to believe he could commit additional crimes, including extortion and obstruction of justice, with impunity. Ferguson needs to receive a substantial prison sentence to deter him from future crimes.

### F. Kinds of Sentences Contemplated by the Sentencing Guidelines

The government concurs with the factual findings contained in the Presentence Investigation Report (PSIR). The government submits the following calculations and applicable guidelines sections:

| | | |
|---|---|---|
| § 2E1.1/ 2C1.1(a)(2) | 12 | (base offense level) |
| § 2C1.1(b)(1) | +2 | (more than one bribe or extortion) |
| § 2C1.1(b)(2)/2B1.1(b)(1)(K) | +20 | (loss amount more than $7,000,000, as explained below) |
| § 2C1.1(b)(3) | +4 | (offense involved elected official) |
| § 3C1.1 | +2 | (obstruction of justice, as explained below) |
| Total Offense Level | **40** | |

Ferguson's Guidelines range with an offense level 40, Criminal History Category III, is 360 months to life.

#### 1. Loss Amount Calculation

In determining the loss amount under Section 2C1.1(b)(2), the guidelines instruct the court, in pertinent part, to use "the value of the payment, the benefit received or to be received in return for the payment, *the value of anything obtained or to be obtained by a public official or others acting with a public official*, or the loss to the government from the offense, *whichever is greatest...*"

U.S.S.G. § 2C1.1(b)(2)(emphasis added). Here, the greatest amount is the value of the things obtained by defendants through their extortion, namely, the $73,845,578 in extorted and rigged contract revenues which were the subjects of the counts of conviction. (*See chart: Revenues and Estimated Profits: Counts of Conviction, attached as Exhibit A).*

Of course, the entire $73.8 million is not counted as the loss amount. Instead, the guidelines explain that the "value of 'the benefit received or to be received' means the **net value** of such benefit." *Id.* at § 2C1.1(b)(2), Application Note 3 (emphasis added). Application Note 3 goes on to explain that the "net value" of a benefit on a contract is the **profit** made on that contract. *Id.*

For the purposes of calculating loss amount, the court need not arrive at an exacting calculation of profit. Instead, "[t]he court need only make a **reasonable estimate** of the loss." *Id.* at § 2B1.1, Application note 3(C)(emphasis added). Indeed, the Sixth Circuit gives great deference to the district court's determination of the loss amount for sentencing purposes. *United States v. Hamilton*, 263 F.3d 645, 654 (6th Cir. 2001). Moreover, "'[i]n challenging a district court's loss calculation, [a defendant] must carry the heavy burden of persuading [the Court of Appeals] that the evaluation of the loss was not only inaccurate, but was outside the realm of permissible computations.'" *Id.* (quoting *United States v. Jackson*, 25 F.3d 327, 330 (6th Cir. 1994)).

Thus, in order to determine the "loss" amount here, the court need only make a reasonable estimate of the "net value," or the profit from the total revenues, that is, $73,845,578 in extorted and rigged contracts. (*See Exhibit A*).

In arriving at its sentence, along with considering the Sentencing Guidelines and the factors enumerated in Section 3553(a), the court must "adequately explain its chosen sentence and its deviation, if any, from the Guidelines range" or the sentence is "procedurally unreasonable." *United States v. Hall*, 632 F.3d 331, 335 (6th Cir. 2011).

Here, it is clear that Ferguson made *at least* a profit of 10% on the contracts at issue, but that percentage was likely higher. First, agents interviewed Billie Hayes of Hayes Excavating, a longtime city contractor who worked on DWSD projects at the time Ferguson was doing similar work. Hayes told agents that a profit of 10%-15% was typical on DWSD contracts, and change orders usually had a 15% profit margin. (*Interview of Hayes, Exhibit I*). Next, Erick Simmons, owner of E & T Trucking, told agents that after Ferguson inserted himself into DWSD contract CM-2014, Ferguson demanded that Simmons pay him a 20% fee on all the payments Simmons received from DWSD. (*Interview of Simmons, Exhibit J*).

According to Kathleen McCann, Inland reached an agreement in principle with Ferguson in June 2002 in which Inland agreed to give him 20% of the work on CS-1368 at a guaranteed 15% profit margin. (*Interview of McCann,* *Exhibit M*). Dennis Oszust of Inland told agents that Ferguson made a total of $23,764,869 on contract CS-1368, of which about $4,000,000 was profit to Ferguson, that is, a 16.8 % profit. (*Interview of Oszust, Exhibit N*).

The statements of Simmons, McCann and Oszust about Ferguson receiving 10% or greater profit on DWSD contrasts are supported by Ferguson's own internal invoices and spreadsheets. Indeed, those documents show Ferguson's profit or markup on DWSD contracts ranged from **10% to 71%**. For example, an FEI invoice to Inland Waters for $673,962 of work on CS-1368 documents a 15% "fee". (*Exhibit B, attached hereto*). Another invoice on that same contract, this one for $317,896, also identifies a 15% fee. (*Exhibit C*). Yet another invoice on that contract, this time for $12,079, shows that Ferguson was receiving a fee of 10%. (*Exhibit D*). Agents located FEI invoices to Inland on contract DWS-864 in the amounts of $213,077 and $155,117, each of which indicates that Ferguson was to make a "20% Profit." (*Exhibits E and F*). Also, a business memorandum from Ferguson employee Al White to Dennis Oszust of Inland Waters indicates that Ferguson Enterprises would receive sewer lining work at a 20% overhead and profit rate ("OH&P"). (*Exhibit G*).

Further confirming the fact that 10% was the *low end* of the profit margin for Ferguson on the contracts of conviction in this case is an Xcel Construction schedule obtained in the investigation. It indicates that Ferguson's gross profit was

32% for the construction of the Patton Park Recreation Center he obtained from Walbridge, 51% for the CM-2015 water main contract he obtained from DCI, 64% for the Heilmann Recreation Center construction project he obtained from Johnson Akinwusi, and 71% for the CM-2014 water main contract he obtained from Lakeshore. (*See Schedule and Summary, attached as Exhibit H).*

While Ferguson's average profit margin for the contracts of conviction was presumably well above 10%, the 10% profit margin is certainly reasonable as a floor, giving Ferguson the benefit of any doubt. When one totals up the revenues from the 10 contracts that formed the counts of conviction – that is, counts 1-4 and 7-9 – the total revenues are $73,845,578. (*Exhibit A*). On two of the contracts, DWS-849 and CM-2014 (Xcel), Ferguson was paid for no-show work, therefore it is appropriate to use 100% of the revenues as profit. A conservative 10% profit margin is applied to all of the other contracts, making the total profit (the "loss" for sentencing purposes) **$9,654,553**. (*Exhibit* A). The corresponding increase in offense level under § 2B1.1(b)(1)(K) is a **plus 20 levels**, as the loss amount more than $7,000,000, but less than $20,000,000. U.S.S.G. § 2B1.1(b)(1)(K).

### 2. Obstruction of Justice

Guidelines Section 3C1.1 applies a two-point increase if the defendant "willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the defendant's instant offense of conviction..." The obstructive conduct must relate to "the defendant's offense of conviction..." U.S.S.G. § 3C1.1. Application note 4 to Section 3C1.1 gives examples of the types of action that would trigger the application of this enhancement for obstruction, and they include, in pertinent part:

> "(A) threatening, intimidating, or otherwise unlawfully influencing a...witness...directly or indirectly, or attempting to do so;
>
> "(C) producing or attempting to produce a false, altered, or counterfeit document or record during an official investigation or judicial proceeding;"
>
> "(F) providing materially false information to a judge..."
>
> "(I) other conduct prohibited by obstruction of justice provisions under Title 18..."

U.S.S.G. § 3C1.1, n. 4.

Ferguson committed acts that fall within each of these categories. As explained in more detail above, Ferguson attempted to unlawfully influence federal grand jury witnesses Darlene Jefferson, Renee Newsome and Josephine Johnson in the summer of 2005. Specifically, after Ferguson learned of a federal grand jury investigation into his straw donations to the Kilpatrick campaign, Ferguson pressured the women to lie in the grand jury and to the FBI and claim that it was their money rather than Ferguson's that was given to the campaign.

The court is also aware of conduct that falls under the second category of obstruction, that is, producing a false or altered document or record during a judicial proceeding. Ferguson did just that when he introduced the altered Ferguson Enterprises Daily Field Record, Exhibit D-IN1-60, in an attempt to fool the jury and the court into believing he was performing work at the site of the sinkhole prior to the incriminating text messages between him and Kilpatrick. And Ferguson continued his subterfuge, relying on his doctored Field Record even after the government exposed it by introducing IN1-72-B, the *true* Daily Field Record in its original form showing that Ferguson was not at the sinkhole site until after the incriminating texts.

In addition, Ferguson provided materially false information to the court at the detention hearing following his convictions. Specifically, he allowed his counsel to argue the lack of a flight risk due to his depleted financial resources, knowing that he had hundreds of thousands of dollars in Alabama bank accounts, funds the government would seize only days later. Finally, Ferguson continued to obstruct justice when he directed his girlfriend and his relative to move and conceal his funds knowing that the government was conducting an official forfeiture action.

## II. CONCLUSION

Although Bobby Ferguson was not a public official, he worked hand-in-glove with mayor Kilpatrick in a criminal partnership of enormous proportions. It was Ferguson, rather than Kilpatrick, who was the "boots on the ground" of the extortion enterprise, directly issuing threats to the local business people. Given these facts and the sheer volume of his ill-gotten gains—over $73 million in city contracts—Ferguson is deserving of a sentence at or near that of Kilpatrick. In the sentencing brief for Kilpatrick, the government examined sentences in corruption cases throughout the nation where defendants received prison terms of between 14 and 28 years. The scale of corruption in this case easily falls at the high end of this range. Thus, Ferguson, as Kilpatrick's partner in crime, should be sentenced at the high end of that range too.

Respectfully submitted,

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Dated: October 3, 2013

## CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2013, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

Gerald Evelyn
*Attorney for Bobby Ferguson*

s/R. MICHAEL BULLOTTA
Assistant U. S. Attorney

Dated: October 3, 2013